United Nations A/HRC/WGAD/2018/33

General Assembly

Distr.: General
28 June 2018
English
Original: French

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session (17–26 April 2018)

Opinion No. 33/2018 concerning Mohamed Ould Ghadde (Mauritania)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/36/38), on 19 January 2018 the Working Group transmitted to the Government of Mauritania a communication concerning Mohamed Ould Ghadde. The Government replied to the communication on 13 March 2018. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mohamed Ould Ghadde is a 44-year-old Mauritanian national residing in Nouakchott. Mr. Ghadde is a senator.

Context

5. According to the source, Mauritania has been in a serious political crisis, stemming from the President's wish to amend the Constitution, since October 2016. The source explains that, in October 2016, the President initiated a political dialogue in the aim of amending the Constitution to allow him to stand for a third term. On 30 October 2016, thousands of Mauritanians demonstrated against the resulting bill. The source notes that amending the Constitution would undermine the fragile institutional balance ushered in by the political transition of 2005 that put an end to the dictatorship. The transition, which ended in 2007, led to the drafting of a Constitution whose major contribution was to limit the length and number of presidential terms. The President is elected for a five-year term, renewable only once.

6. The source explains that in 2017, the President tabled a bill on constitutional review whose aim was to abolish the Senate and the High Court of Justice and modify the national anthem and flag. The bill was approved by the National Assembly but was rejected by a majority in the Senate on 17 March 2017.

7. According to the source, Mr. Ghadde, who at the time was Chair of the parliamentary inquiry commission on direct contracting procurement, was the main objector to the bill. The source reports that the commission, which looked into the equipment, energy, mining, industry and agricultural sectors, among others, had purportedly uncovered a number of contracts that raised serious suspicions of deficient or dishonest financial management or misappropriations that benefited the President's inner circle. The source asserts that the Commission's determination to complete its inquiries, despite the administration's refusal to provide it with any information, was one of the reasons behind the President's decision to abolish the Senate, which he did not have the power to dissolve.

8. In order to circumvent the rejection of the bill on constitutional review, the President chose to consult the population directly via a referendum on the same issues on 5 August 2017. According to the source, the referendum was organized in breach of the Constitution given that the bill had already been rejected by the parliament and that a vote on institutional change must be preapproved by both chambers in keeping with article 99 of the Constitution. The source contends that, according to the detractors, the goal of this strong-arm approach was to gain acceptance for the idea of amending the Constitution via referendum in the aim of repeating the exercise later with regard to a third term of office.

9. The source also contends that the referendum campaign was characterized by a climate of terror. On 26 and 27 July 2017, the peaceful demonstrations led by the opposition were harshly suppressed by government forces. Mr. Ghadde, who had led the opposition in the Senate, was a central figure of the demonstrations. The source asserts that Mr. Ghadde was injured several times during the demonstrations and required hospitalization. In addition, the source recalls that, on 3 August 2017, the Office of the United Nations High Commissioner for Human Rights (OHCHR) stated in a press release that it was concerned about the climate of the campaign and the apparent suppression of dissenting voices.

10. The source goes on to explain that, on 5 August 2017, all eight opposition parties boycotted the referendum. The "yes" camp won with 85.6 per cent of votes, and voter turnout was 53 per cent.

11. Furthermore, the source reports interference in the judicial sphere, which is exploited by the current regime. For example, in 2011, judges were disbarred or demoted by presidential decree after acquitting several people in an ordinary case. Four of the judges

were reinstated following the intervention of the Special Rapporteur on the independence of judges and lawyers of the Human Rights Council.

Arrest and detention

12. The source reports that, on the evening of 10 August 2017, Mr. Ghadde was arrested at his home in Nouakchott, in front of his wife and children, by eight individuals in plain clothing claiming to be members of the police. The police officers did not have an arrest warrant but said that they had orders to take Mr. Ghadde in and that he had to cooperate.

13. The source notes that Mr. Ghadde was then detained for a week in a room at the headquarters of the Directorate General of National Security in Nouakchott, which came under the police. He was then handed over to the gendarmerie at the joint station in Nouakchott for one day and later returned to the police. It was not until 18 August 2017 that the authorities formally remanded Mr. Ghadde into police custody.

14. The source asserts that, during this period, Mr. Ghadde was not informed of the reasons for his arrest. A week after his initial arrest, a police superintendent informed him that he would be charged with offences against public safety and morality and that the police would proceed with questioning.

15. The source recounts that, on 18 August 2017, the public prosecutor's office in Nouakchott announced in a communiqué that investigations were being conducted into allegations of large-scale cross-border crimes that went against the morals and values of Mauritanian society. On 31 August 2017, an investigating judge charged Mr. Ghadde with corruption under the Anti-Corruption Act No. 2016.014 of 15 April 2016. On 1 September 2017, Mr. Ghadde was placed in pretrial detention at the Nouakchott civilian prison.

16. The source argues that the pretrial detention was not adequately reasoned by the investigating judge, who simply based his order on article 138 of the Code of Criminal Procedure and recalled that the request had come from the public prosecutor's office.[1]

17. The source states that, in the meantime, four journalists were detained or summoned by the security forces on 25 August 2017 in connection with national security. They were questioned on, inter alia, articles referring to Mr. Ghadde's arrest. They were then placed under court supervision. Two trade union leaders were also detained. On 31 August 2017, the public prosecutor's office initiated proceedings against the four journalists, the two trade union leaders, two businessmen, a former non-commissioned officer and 13 senators.

18. The source further contends that, on 11 October 2017, Mr. Ghadde was taken from his cell to be brought before an investigating judge for the first time, though his treatment on this occasion was neither decent nor human. The source claims that Mr. Ghadde was handcuffed and prevented from eating or drinking water and therefore refused to meet with the investigating judge under those conditions. It was not until 12 October 2017 that the first interview with the investigating judge took place. According to the source, in early November 2017, the investigating judges extended the court supervision for two months. On 9 January 2018, the court supervision was extended again.

19. In addition, the source asserts that Mr. Ghadde's lawyers petitioned the indictments chamber to dismiss the charges pursuant to article 50 of the Constitution, which guarantees parliamentary immunity and strictly regulates the arrest and detention of parliamentarians. The indictments chamber rejected the petition on the grounds that it was not competent to rule on the matter; Mr. Ghadde's lawyers appealed the decision.

20. The source notes that Mr. Ghadde's arrest was his fifth in 2017. Indeed, on 12 May 2017, Mr. Ghadde was arrested by the gendarmerie in Rosso following a traffic accident. He was detained then arrested despite being covered by parliamentary immunity. The

[1] Article 138 of the Code of Criminal Procedure stipulates that any witness who receives a summons as part of a request for judicial assistance is required to appear before the court, take an oath and present their testimony, subject to the provisions of article 350 of the Criminal Code.

Should the witness fail to discharge these obligations, the issuing judge shall be notified and may take action in accordance with article 98 (2), (3) and (4).

source claims that Mr. Ghadde was spied on around the time of that arrest, in violation of his privacy and the confidentiality of his correspondence. After confiscating his personal telephones, the gendarmerie combed through all the messages, including exchanges with members of the Senate and personal messages. When he appeared before the public prosecutor for the first time, Mr. Ghadde attempted to lodge a complaint against the chief of the gendarmerie unit for probing his telephones and violating the confidentiality of his correspondence; the public prosecutor refused to register the complaint. After the case was transferred to the court, Mr. Ghadde requested that the confiscated items, including the telephones, be returned to him. The court and the appeals court both ruled in his favour and all the items were returned to him, except the telephones. The source claims that the public prosecutor's office refused to return them despite the court order. In addition, according to the source, after the telephones were confiscated, some of Mr. Ghadde's correspondence began to be systematically made public. The leaks took place between 19 and 23 July 2017. According to a news website, the national gendarmerie was the source of the leaks.

Deprivation of liberty under category I

21. According to the source, when Mr. Ghadde was arrested on 10 August 2017, the police officers who executed the arrest were unable to provide the reasons or legal basis for his deprivation of liberty. Mr. Ghadde was then detained incommunicado for a week, until 17 August 2017, without being allowed to communicate with or see his family or lawyers. During that week, Mr. Ghadde was not informed of the reasons for his arrest. His police custody officially began on 18 August 2017. The public prosecutor's office stated in a communiqué that the police custody was necessary as part of an investigation into the aiding, abetting and planning of large-scale cross-border crimes that went against the morals and values of Mauritanian society and had been committed under the aegis of an organized structure with the purpose of causing disruptions and undermining public security. However, according to the source, there is no offence in the Criminal Code corresponding to the charge of large-scale cross-border crimes. In the same communiqué, the public prosecutor's office asserted that the detainee had been arrested together with another suspect on the basis of a complaint by an army officer regarding invented events and the spreading of false statements.

22. According to the source, the public prosecutor's office itself admitted in the communiqué dated 18 August 2017 that the proper procedure had not been followed during Mr. Ghadde's arrest on 10 August 2017, stating that the launch of in-depth investigations into these serious offences had followed a non-traditional procedure being applied in the country for the first time.

23. The source also claims that, even if the police custody ordered on 18 August 2017 were considered legal, article 56 of the Code of Criminal Procedure requires any person placed in police custody to be released within 48 hours. Mr. Ghadde should, therefore, have been released on 20 August 2017. However, he was not brought before an investigating judge until 1 September 2017, at which time he was indicted and placed in pretrial detention. Thus, between 20 August and 1 September 2017, Mr. Ghadde was in any case detained beyond the statutory limit on police custody without any legal basis.

24. Furthermore, the source argues that Mr. Ghadde's indictment should be considered null and void. Mr. Ghadde's first hearing before an investigating judge was held on Friday, 1 September 2017, in other words on Eid al-Adha, a holiday. For this reason, the investigating judge antedated the indictment and the pretrial detention order to Thursday, 31 August 2017. Hence why the source contends that the incorrectly dated legal act should be considered fake and without legal effect and that Mr. Ghadde's pretrial detention since 1 September 2017 has no admissible legal basis and should be considered arbitrary.

25. Moreover, the source notes that, as a senator, Mr. Ghadde enjoyed parliamentary immunity as provided for in article 50 of the Constitution. According to the source, a member of parliament cannot be arrested in a criminal matter without the authorization of the Assembly of which he or she is a part, except in cases of flagrante delicto, authorized proceedings or a definitive conviction. The source notes that none of these scenarios applied to Mr. Ghadde when he was arrested on 10 August 2017.

26. For these reasons, the source believes that Mr. Ghadde's detention should be considered arbitrary under category I.

Deprivation of liberty under category II

27. According to the source, the arrest and detention of Mr. Ghadde are the direct consequence of the exercise of his right to freedom of expression and his right not to be prosecuted for his opinions, as enshrined in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Mr. Ghadde exercised those rights when he campaigned against the bill on constitutional review and the holding of the referendum to amend the Constitution and in his work as an opposition senator. His arrest took place a few days after the referendum he opposed was held.

28. The source recalls that in its communiqué of 18 August 2017, the public prosecutor's office accused Mr. Ghadde of inventing events and spreading false statements. This demonstrates that it was for exercising his right to freedom of expression that Mr. Ghadde was originally targeted.

29. Furthermore, the source believes that the punishment and detention of Mr. Ghadde resulted from the exercise of his right to peaceful assembly, as enshrined in article 20 of the Universal Declaration of Human Rights and article 21 of the Covenant, when he took part in demonstrations during the campaign against the referendum, specifically on 26 and 27 July 2017.

30. For these reasons, the source concludes that Mr. Ghadde's detention should be considered arbitrary under category II.

Deprivation of liberty under category V

31. The source notes that Mr. Ghadde is being detained for his political opinions. He has long opposed the Mauritanian regime. He is considered to be one of the leaders of the opposition and to have organized demonstrations against the President's authoritarian tendencies. He was a key player in the Senate movement against the bill on constitutional review in March 2017 and against the constitutional referendum held on 5 August 2017. As mentioned above, Mr. Ghadde also chaired the parliamentary inquiry commission that looked into suspected misappropriation by the President's inner circle, thereby solidifying his position as a preferred target of the Government.

32. According to the source, the official proceedings for corruption brought against Mr. Ghadde, other senators, journalists, trade unionists and businessmen are nothing but a pretext to silence dissident voices and intimidate anyone else who dares to oppose the regime.

33. For these reasons, the source believes that Mr. Ghadde's detention should be considered arbitrary under category V.

Response from the Government

34. On 19 January 2018, the Working Group transmitted the source's claims to the Government of Mauritania under its regular communication procedure, requesting a reply by 20 March 2018.

35. The Government submitted its response on 12 March 2018. It contests the source's claims and asserts that Mr. Ghadde's arrest and detention were carried out in compliance with the laws and regulations in force. Consequently, the Government argues that the complainant's detention is not arbitrary under categories I, II or V.

36. Regarding category I, the Government states that Mr. Ghadde was perfectly well informed of the grounds for his arrest and that he has enjoyed all the rights to which detainees are entitled from the start of his detention. The Government confirms that the offence of large-scale cross-border crimes does not exist in the Criminal Code but that the communiqué of the public prosecutor's office in which the expression was used was intended for public information purposes only; it was not an indictment. The Government

specifies that the offence being prosecuted is corruption and that the term cross-border describes the context in which the punishable acts were committed. The provisions that apply to the acts are contained in the Anti-Corruption Act No. 2016.014, not the Criminal Code.

37. The Government contends that Mr. Ghadde was placed in police custody on 10 August 2017 for defamation. A new pretrial detention order was issued on 18 August 2017 for corruption. According to the Government, these two periods of police custody did not exceed the statutory limit on detentions under Act No. 2016.014 as Mr. Ghadde was brought before the judge on 31 August 2017. Article 27 of the Act provides for derogations whereby police custody can last for 48 hours and be renewed three times on the authorization of the public prosecutor, or eight clear days.

38. The Government challenges the source's claim regarding the modification of the date of the indictment. The authorities maintain that all the procedural acts were drawn up and signed on 31 August 2017 in the prescribed form and, therefore, are not null and void. Moreover, had they been null and void, that would have been declared by the competent bodies at the time the case was submitted to them. Lastly, the Government notes that at no time did Mr. Ghadde's lawyers raise any irregularities despite being entitled to do so.

39. Concerning Mr. Ghadde's parliamentary immunity, the Government affirms that he lost his immunity when the Senate was abolished following the referendum of 5 August 2017. From that date onwards, he once again became an ordinary citizen without any legal privileges. In any case, the acts of which he is accused fall outside the scope of his parliamentary functions, depriving him of his immunity.

40. With regard to category II, the Government deems the source's claims to be erroneous. Contrary to what the source reported, the Government asserts that Mr. Ghadde was not arrested for opposing the constitutional amendments but, rather, for acts of corruption. As evidence of this, the Government notes that many other politicians took part in demonstrations and were not arrested. As for his immunity at the time of the events, the Government argues that the acts of which Mr. Ghadde is accused were committed during his term as a senator and can be separated from the exercise of his functions.

41. In addition, the source's claim that the public prosecutor's office accused Mr. Ghadde of inventing events and spreading false information, thereby proving that he was targeted for exercising his right to freedom of expression, is inaccurate according to the Government. It asserts that the public prosecutor is not accusing Mr. Ghadde of making false statements and simply recalls that Mr. Ghadde is the object of other proceedings in which he is accused of inventing events and spreading false information. According to the Government, Mr. Ghadde himself has acknowledged these acts which cannot, then, be the fruit of the exercise of his freedom of expression.

42. The Government considers the source's claims that the punishment of Mr. Ghadde stems from the exercise of his right to peaceful assembly during the demonstrations of 26 and 27 July 2017 to be false given that the right of assembly, like all fundamental freedoms, is guaranteed in law and in practice in Mauritania.

43. Concerning category V, the Government maintains that Mr. Ghadde is not being detained for his political opinions. Indeed, the authorities consider the complainant's status as a politician to be unrelated to the proceedings against him. The Government adds that Mr. Ghadde is overplaying his political role and that anyone with the slightest knowledge of Mauritania would be surprised to hear him described as the leader of the opposition. Lastly, the Government wonders why the support Mr. Ghadde has received from his opposition colleagues following his arrest would be so lukewarm if he was, as the source claims, one of the leaders of the movement.

44. In response to the source's claim that the grounds for Mr. Ghadde's arrest include his role as a leader of the movement against the referendum and the President's authoritarian tendencies, the Government asserts that this argument is a pretext to avoid discussing the acts of which Mr. Ghadde is accused. It is a well-worn trick to create a diversion by claiming persecution for his opinions. Lastly, the Government maintains that

there is not a single political prisoner in Mauritanian establishments and that the press enjoys complete independence and freedom in the country.

Further information from the source

45. The source notes that the Government did not supplement its account with documents or evidence of any kind and makes little more than assertions. Moreover, the Government did not provide any information regarding Mr. Ghadde's incommunicado detention from 10 to 16 August 2017.

46. The source challenges the Government's justifications according to which Mr. Ghadde could not benefit from parliamentary immunity owing to the nature of the acts he is charged with and the abolishment of the Senate. The source points out that Mr. Ghadde was arrested on 10 August 2017 when the Senate was not officially abolished until 15 August by a presidential decree that the source has submitted to the Working Group. The source further points out that the Government did not provide any legal basis justifying the revocation of immunity on the basis of the charges laid. The source recalls that article 50 of the Constitution guarantees parliamentary immunity except in cases of flagrante delicto or where the parliament authorizes proceedings to be brought against a person for acts performed outside of his or her parliamentary functions. However, the parliament did not issue an authorization to revoke Mr. Ghadde's immunity.

47. Regarding the conditions in which Mr. Ghadde was arrested and detained, the source recalls that the Government merely stated that the police was entitled to arrest anyone at any time, without substantiating the statement or justifying why the arrest took place in the middle of the night and was followed by several days of detention for mere allegations of defamation. The source also recalls that Mr. Ghadde's first period in police custody exceeded statutory limits and that no court order had been issued authorizing the extension of the custody every 48 hours or the excessive number of extensions. In addition, the source notes that the second period of detention also exceeded statutory limits. Accordingly, in the source's view, the following due process guarantees in the context of police custody were violated: the drawing up of interview reports, the 48-hour renewal by the public prosecutor's office, notification of the family and communication with counsel when police custody is extended. In support of these assertions, the source recalls that the Government failed to produce documents proving the purported legality of the proceedings against Mr. Ghadde.

48. Concerning the threat to the independence of the judiciary, the source claims that the Government is attempting to minimize Mr. Ghadde's political role and annexes many documents in support of these claims. By way of example, the source states that the so-called "defamation" case against Mr. Ghadde, which justified his initial detention, is a political case and that the proceedings for corruption are unfounded. The source refutes the Government's assertions that it refrains from interfering in or commenting on legal proceedings and decisions, and appends various reports and documents indicating the opposite.

49. Lastly, the source illustrates, through several annexes, the human rights situation in Mauritania, especially with regard to breaches of freedom of expression, barriers to the exercise of the right to protest, arbitrary arrests, and violations against human rights defenders.

Discussion

50. Firstly, the Working Group wishes to express its gratitude to the parties for their cooperation in the present procedure.

51. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has challenged the allegations made by the source.

52. Concerning the general context, it should be recalled that public information abounds, particularly with regard to the climate during the referendum campaign and to Mr. Ghadde's extended detention.[2] It should also be noted that the source has provided considerable evidence in support of its complaint and response, whereas the Government, although it did in fact respond to the claims regarding the arbitrary nature of Mr. Ghadde's detention, did not submit any documents to support its assertions.

53. In a press release of 3 August 2017, the spokesperson for the United Nations Office of the High Commissioner for Human Rights (OHCHR) expressed concern at the unrest ahead of the referendum, particularly the apparent suppression of dissenting voices and the excessive use of force by the authorities against protest leaders. The release also referred to the arrest and brutal treatment of several members of the opposition. Lastly, the spokesperson urged the Government to ensure that its response to the protests was in line with its obligations under international human rights law and to ensure that the rights to peaceful assembly and to freedom of opinion and expression were fully respected.[3]

54. Mr. Ghadde was arrested at his home five days after the referendum and claims that he was initially held incommunicado from 10 to 16 August 2017. The Government does not dispute the arrest but maintains that it was carried out in accordance with the rules. The Government did not, however, submit any corroborating evidence, such as an arrest warrant, an arrest report or a copy of the detention register. According to the Government, Mr. Ghadde was informed that proceedings were being brought against him initially for defamation and, later, for corruption. The Government specified that the 48-hour period of police custody could be extended three times for 48 hours each time. Therefore, assuming that the Government is correct, the police custody in relation to the corruption charge should have ended on 26 August 2017. However, the Government acknowledged that it was not until 31 August 2017 that Mr. Ghadde was brought before a judge. Moreover, the successive periods of police custody appear to have been a strategy to bypass the limit on police custody, such that three weeks elapsed before Mr. Ghadde was brought before a judge. Objectively, this undermines the imperative to promptly give a detainee the opportunity to challenge his or her detention and to know in detail the reasons for the detention. Under these circumstances, without it being necessary to choose between the two versions, the Working Group finds that Mr. Ghadde was held in incommunicado detention and for longer than prescribed by law before being brought before a judge, in violation of article 9 (3) of the Covenant.

55. Regarding the parliamentary immunity claimed by Mr. Ghadde, the Government stated that Mr. Ghadde ceased being a senator from the moment the results of the referendum were known. Yet, the Government did not issue a decree on the consequences of the referendum, in other words the dissolution of the Senate, until 15 August 2017. It would follow that it was not until the Senate had been dissolved that the senators became ordinary citizens, meaning that, on 10 August 2017, Mr. Ghadde still enjoyed immunity. Furthermore, the Government does not claim that the Senator was arrested in flagrante delicto or that immunity had been revoked; therefore, his arrest under these circumstances was in breach of his parliamentary immunity.

56. These elements combined, namely the incommunicado detention from 10 to 16 August 2017, the excessive length of police custody and parliamentary immunity, render Mr. Ghadde's arrest and detention legally baseless and, therefore, arbitrary under category I.

57. The source also claimed that Senator Ghadde's views were what prompted his arrest and subsequent detention. The Working Group has received sufficient information

[2] See for example: Agence mauritanienne d'information, *Le parquet général annonce l'ouverture des enquêtes préliminaires sur des crimes transfrontaliers* (The public prosecution service announces preliminary investigations into cross-border crimes), 18 August 2017; Human Rights Watch, *Mauritania: Prolonged Detention of Opposition Leader*, 5 October 2017; Radio France Internationale, *Sénateurs poursuivis en Mauritanie : le contrôle judiciaire est maintenu* (Senators on trial in Mauritania: court supervision is upheld), 9 January 2018.

[3] OHCHR, *Comment by OHCHR Spokesperson Ravina Shamdasani on Mauritania*, Geneva, 3 August 2017.

concerning the activities of the parliamentary inquiry commission on direct contracting procurement and the circumstances surrounding the referendum campaign, including the Senate's opposition to the constitutional reform. The timing of the arrest and detention, as well as their circumstances in the light of all the evidence submitted by the source, would lead the Working Group to find in favour of the source. The Working Group is convinced that the Mr. Ghadde's advocacy in the Senate and on the political scene in Mauritania is the cause of his deprivation of liberty despite being protected under articles 19, 21, 22 and 25 of the Covenant.

58. Consequently, the Working Group finds that the arrest and detention of Mr. Ghadde are arbitrary under category II. Under these circumstances, he should not be tried. The foregoing not withstanding, criminal proceedings are under way against Mr. Ghadde and the source claims that his right to a fair trial has been violated. The Working Group is of the view that, in the present case, its finding in favour of the source in relation to category II is sufficient and, accordingly, will not consider the points relating to a fair trial.

59. Lastly, the source claims that Mr. Ghadde is being discriminated against, thereby rendering his detention arbitrary under category V. However, the alleged discrimination is based on the exercise of protected rights that are already covered in the Working Group's finding in favour of the source in relation to category II. The Working Group is of the view that this finding suffices in the present case.

60. Given that the Working Group has been accustomed to good cooperation with the Government of Mauritania, it is concerned at the cases it has considered in recent years (Opinions No. 36/2016, No. 35/2017 and No. 90/2017). In the aim of preventing the situation from deteriorating, the Working Group is of the view that a visit would be appropriate in order to assist the Government in adhering to international law. Thus, the Working Group reiterates its interest in such a visit, whose purpose would be to pursue its constructive dialogue with the Government and help Mauritania improve its legislation and practice in order to prevent arbitrary deprivation of liberty, which is vital for the consolidation of democracy and the protection of human rights.

Disposition

61. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mohamed Ould Ghadde, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and of articles 9, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and II.

62. The Working Group requests the Government of Mauritania to take the necessary steps to remedy the situation of Mr. Ghadde without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

63. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ghadde immediately and accord him an enforceable right to reparation, including compensation and a guarantee of non-repetition, in accordance with international law, and to provide him with medical care as needed and appropriate for his condition.

64. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ghadde and to take appropriate measures against those responsible for the violation of his rights.

Follow-up procedure

65. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Ghadde has been released and, if so, on what date;

(b) Whether Mr. Ghadde has received reparation, including compensation and a guarantee of non-repetition;

(c) Whether an investigation has been conducted into the violation of Mr. Ghadde's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Mauritania with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

66. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

67. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

68. In addition, the Government should disseminate through all available means the present opinion among all stakeholders.

69. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken.[4]

[*Adopted on 25 April 2018*]

[4] See Human Rights Council resolution 33/30, paras. 3 and 7.